

1 TRULY SUGHRUE, Counsel
2 State Bar No. 223266
3 Department of Real Estate
4 P.O. Box 137007
5 Sacramento, CA 95813-7007

6 Telephone: (916) 263-8672
7 (916) 263-8676 (Direct)

8 Fax: (916) 263-3767

FILED

NOV 16 2018

DEPARTMENT OF REAL ESTATE

By Y. Knapp

9 BEFORE THE DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

11 In the Matter of the Accusation of)

12 TIMOTHY JAMES RUSHING,)

13 Respondent.)

No. H-3212 FR

ACCUSATION

14 The Complainant, BRENDA SMITH, a Supervising Special Investigator of the
15 State of California, for cause of Accusation against TIMOTHY JAMES RUSHING
16 (Respondent), is informed and alleges as follows:

17 1

18 The Complainant, BRENDA SMITH, a Supervising Special Investigator of the
19 State of California, makes this Accusation in her official capacity.

20 2

21 Respondent is presently licensed and/or has license rights under the Real Estate
22 Law, Part 1 of Division 4 of the Business and Professions Code (Code).

23 3

24 At all times mentioned, Respondent was and is licensed by the Department as a
25 real estate broker.

26 ///

27 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

4

At all times mentioned, Respondent engaged in the business of, acted in the capacity of, advertised, or assumed to act as a real estate broker within the State of California within the meaning of Sections 10131(b) of the Code, including the operation and conduct of a property management business with the public wherein, on behalf of others, for compensation or in expectation of compensation, Respondent leased or rented and offered to lease or rent, and solicited for prospective tenants of real property or improvements thereon, and collected rents from real property or improvements thereon.

5

On or about September 29, 2017 an audit was conducted of the records of Respondent. The auditor herein examined the records for the period of August 1, 2016, through August 31, 2017.

6

While acting as a real estate broker as described in Paragraph 4, Respondent accepted or received funds in trust (trust funds) from or on behalf of owners and tenants in connection with the leasing, renting, and collection of rents on real property or improvements thereon, as alleged herein, and thereafter from time-to-time made disbursements of said trust funds.

7

The trust funds accepted or received by Respondent as described in Paragraph 6 were deposited or caused to be deposited by Respondent into trust accounts which were maintained by Respondent for the handling of trust funds, and thereafter from time-to-time Respondent made disbursements of said trust funds, identified as follows:

///

///

///

///

ACCOUNT # 1	
Bank Name and Location:	Rabo Bank 2190 Monte Vista Turlock, CA 95382
Account No.:	XXXXXX4272
Entitled:	Tim Rushing, dba RPM Rushing Property Management Operating Trust Account

ACCOUNT # 2	
Bank Name and Location:	Rabo Bank 2190 Monte Vista Turlock, CA 95382
Account No.:	XXXXXX5389
Entitled:	Tim Rushing, dba RPM Rushing Property Management Trust Account

ACCOUNT # 3	
Bank Name and Location:	Rabo Bank 2190 Monte Vista Turlock, CA 95382
Account No.:	XXXXXX8757
Entitled:	Tim Rushing, dba RPM Rushing Property Management & Real Estate

ACCOUNT # 4	
Bank Name and Location:	Rabo Bank 2190 Monte Vista

	Turlock, CA 95382
Account No.:	XXXXXX9703
Entitled:	Tim Rushing, dba RPM Rushing Property Management & Real Estate

8

In the course of the activities described in Paragraph 4, Respondent:

- a) caused, suffered, or permitted the balance of funds in Account #1 to be reduced to an amount which, as of August 31, 2017, was approximately \$2,373.15 less than the aggregate liability of Account #1 to all owners of such funds in violation of Section 10145 of the Code and Section 2832.1 of Title 10 of the California Code of Regulations (Regulations);
- b) failed to keep accurate separate records for each beneficiary or transaction, accounting therein for all funds which were deposited into Account #1, 2, 3 and 4 containing all of the information required by Section 2831.1 of the Regulations;
- c) failed to reconcile the balance of separate beneficiary or transaction records with the control record of trust funds received and disbursed at least once a month, and/or failed to maintain a record of such reconciliations for Account #1 and 2 as required by Section 2831.2 of the Regulations; and
- d) failed to maintain a written control record, for Account #1 and 3, of all trust funds received and disbursed, containing all information required by Section 2831 of the Regulations.

9

The acts and/or omissions of Respondent as alleged in the First Cause of Action constitute grounds for the suspension or revocation of all licenses and license rights of Respondent, pursuant to the following provisions of the Code and Regulations:

As to Paragraph 8(a), under Sections 10177(d) and/or 10177(g) of the Code in conjunction with Section 10145 of the Code and Section 2832.1 of the Regulations;

///

1 As to Paragraph 8(b), under Sections 10177(d) and/or 10177(g) of the Code in
2 conjunction with Section 10145(g) of the Code and Section 2831.1 of the Regulations;

3 As to Paragraph 8(c), under Sections 10177(d) and/or 10177(g) of the Code in
4 conjunction with Section 2831.2 of the Regulations; and

5 As to Paragraph 8(d), under Sections 10177(d) and/or 10177(g) of the Code in
6 conjunction with Section 2831 of the Regulations.

7 COST RECOVERY

8 10

9 The acts and/or omissions of Respondent as alleged above, entitle the Department
10 to reimbursement of the costs of its audit pursuant to Section 10148(b) (audit costs for trust fund
11 handling violation) of the Code.

12 11

13 Section 10106 of the Code provides, in pertinent part, that in any order issued in
14 resolution of a disciplinary proceeding before the Department, the Commissioner may request the
15 Administrative Law Judge to direct a licensee found to have committed a violation of this part to
16 pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

17 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
18 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary
19 action against all licenses and license rights of Respondent under the Code, for the cost of
20 investigation and enforcement as permitted by law, for the cost of the audit, and for such other
21 and further relief as may be proper under other provisions of law.

22
23 
24 BREND A SMITH

Supervising Special Investigator

25 Dated at Fresno, California,

26 this 9 day of November, 2018

27 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

DISCOVERY DEMAND

Pursuant to Sections 11507.6, *et seq.* of the *Government Code*, the Department of Real Estate hereby makes demand for discovery pursuant to the guidelines set forth in the *Administrative Procedure Act*. Failure to provide Discovery to the Department of Real Estate may result in the exclusion of witnesses and documents at the hearing or other sanctions that the Office of Administrative Hearings deems appropriate.